LIBRARY
SUPREME COURT, U. S.

Office Supreme Court, U.S.
FILED
NOV 1969
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1969

No. 879

JOE M. CREVASSEE, JR., SHERIFF
of Alachua County, Florida,
Petitioner,

-vs-

CAROL W. THOMAS,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

EARL FAIRCLOTH
Attorney General

RAYMOND L. MARKY
Assistant Attorney General

The Capitol
Tallahassee, Florida 32304

COUNSEL FOR THE PETITIONER

TABLE OF CONTENTS

PRELIMINARY STATEMENT 1

OPINIONS BELOW 2

JURISDICTION 2

QUESTIONS PRESENTED 2

STATUTES INVOLVED 2

STATEMENT OF THE CASE AND FACTS 3

ARGUMENT 9

CONCLUSION 15

PROOF OF SERVICE 16

TABLE OF CITATIONS

American Society and the Rebirth of Civil Obedience, 54 A.B.A.J. 653 (1968) 15

Bridges v. California, 314 U.S. 252 (1941) 5, 7, 9, 11, 12, 13

Craig v. Harney, 331 U.S. 367 (1947) 5, 9, 11, 12, 13

Dawkins and Thomas v. Florida, Case Number 164, October Term 1968 6

Dawkins v. State, Fla. App. 1st 1968, 208 So.2d 119 5

Patterson v. Colorado, 205 U.S. 454, 463 13

Pennekamp v. Florida, 328 U.S. 331 (1946) 5, 6, 9, 11, 12, 13, 14, 15

State v. Morris, 406 P.2d 349, 357 (1965) 12

Wood v. Georgia, 370 U.S. 375 (1962) 5, 6, 7, 9, 10, 11, 12, 13

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1969

No. _____

JOE M. CREVASSEE, JR., SHERIFF of Alachua County, Florida,

Petitioner,

-vs-

CAROL W. THOMAS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PRELIMINARY STATEMENT

Joe M. Crevassee, Jr., Sheriff of Alachua County, Florida, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals, in and for the Fifth Circuit, entered on June 26, 1969, rehearing denied August 19, 1969.

OPINIONS BELOW

The initial opinion or order of the Federal District Court in and for the Northern District of Florida was filed on November 5, 1968, and the same is reproduced and included in Appendix I. Said order was not reported.

The opinion of the United States Court of Appeals, in and for the Fifth Circuit, dated June 26, 1969, is not yet reported. Said opinion is reproduced and included in Appendix II.

JURISDICTION

The Jurisdiction of this Court to enter the writ of certiorari is invoked pursuant to 28 U.S.C., Section 1254(1).

QUESTION PRESENTED

THE COURT OF APPEALS, FIFTH CIRCUIT, FAILED TO GIVE EFFECT TO THE STATE COURT FINDINGS OF FACT AS REQUIRED BY 28 U.S.C., SECTION 2254(d) AND SAID RULING IS IN CONFLICT WITH THE DECISIONS OF THIS COURT IN *BRIDGES V. CALIFORNIA*, 314 U.S. 252 (1941); *PENNEKAMP V. FLORIDA*, 328 U.S. 331 (1946); *CRAIG V. HARNEY*, 331 U.S. 367 (1947); AND, *WOOD V. GEORGIA*, 370 U.S. 375 (1962).

STATUTES INVOLVED

The statute involved in the instant case is 28 U.S.C., Section 2254(d), as amended, 1966.

STATEMENT OF THE CASE AND FACTS

The respondent, Carol W. Thomas, and one Jack Dawkins initiated charges against the law enforcement authorities of the City of Gainesville, Florida (Respondent's Exhibit 5, p. 19; App. Br. p. 11), charging them with police brutality, sexual molestation of prisoners and racism. As a result of said charges the Alachua County Grand Jury was called into session for the purpose of investigating the charges and hearings were scheduled for December 18, 1967 (Respondent's Exhibit 6, p. 17, 18). The respondent and Dawkins were subpoenaed to testify before the grand jury and were thus given the opportunity to present their views as well as their knowledge of specific acts upon which their charges were based. This is apparent from the publication which they authored and distributed. While the grand jury was in session or during a recess, Dawkins distributed four copies of the publication, "Black Voices", to four persons in the hallway adjacent to the grand jury room and respondent and Dawkins distributed copies of said publication elsewhere in the City of Gainesville (Respondent's Exhibit 6, p. 18, paragraphs 5 and 6). Dawkins and the respondent were co-authors of the publication (Respondent's Exhibit 6, p. 15, paragraph 1).

Said publication, in addition to accusing various officials of being "racist" and "[N]egro-hating hunkie[s]", stated the ". . . grand-jury is just as racist and Klan infested as the police department . . .". The article then concluded that nothing would be done because "what they will probably do is put in a couple of Uncle Toms to make their findings justifiable . . .". The publication further accused the grand jury of being "fixed" (Respondent's Exhibit 6, p. 3).

As a result of the respondent's actions and the actions of her

co-respondent, Dawkins, in distributing the publication in the manner described above, the state attorney filed an affidavit and petition for rule to show cause alleging respondent and Dawkins were guilty of contempt of court in that the publication held the Court and grand jury up to ridicule and ". . . impugned the impartiality of . . . the present grand jury . . ." (Respondent's Exhibit 6, p. 3). Respondent and Dawkins filed their joint answer admitting that they authored said publication and that they distributed it as set forth hereinabove (Respondent's Exhibit 6, p. 15). No disclaimer of malicious intent was filed or evidence presented in mitigation by respondent or Dawkins.

On the basis of the affidavit and petition for rule to show cause, the stipulation and the answer, that state circuit judge found the respondent and Dawkins guilty of contempt and imposed four and six month sentences on Carol W. Thomas and Jack Dawkins, respectively. The judge entered a lengthy order (Respondent's Exhibit 6, p. 19 through 23), and after noting the question was whether the publication ". . . was calculated and intended to interfere with the administration of justice and created a clear and present danger . . ." (Exhibit 6, p. 19) thereto, made certain findings. He found the publication ". . . itself to be a calculated effort on the part of the respondent (Respondent herein) to interfere with the administration of justice, and this being so it would not be necessary to show that it did actually influence the grand jury in any report which may be made . . ." (Exhibit 6, p. 20). He further found that inasmuch as the publication was distributed in the courthouse, it was probable that said publication would come into the hands of a member of the grand jury, and that the probability of influence was to be condemned. As to the reference in the publication to Negro members of the grand jury, the trial judge found these to be a

"veiled threat". The court found the publication calculated to produce in the mind a purpose to refuse to accept or respect any report which the grand jury rendered and that it ". . . under the circumstances, was calculated and intended to interfere with the administration of justice and *did create* a clear and present danger . . ." (Exhibit 6, p. 22).

Respondent and Dawkins appealed the contempt conviction to the District Court of Appeal, First District and that court affirmed said conviction on *March 7, 1968. Dawkins v. State,* Fla. App. 1st 1968, 208 So.2d 119. Respondent relied on the decisions of the United States Supreme Court in *Bridges v. California,* 314 U.S. 252 (1941); *Pennekamp v. Florida,* 328 U.S. 331 (1946); *Craig v. Harney,* 331 U.S. 367 (1947), and *Wood v. Georgia,* 370 U.S. 375 (1962). The court's examination of said decisions failed to persuade them that they were controlling in the case. The court viewed the actions as equivalent to jury tampering rather than criticism and held that, measured in light of the standards articulated by the United States Supreme Court in *Bridges v. California,* supra, the evidence presented by the record before it furnished a ". . . rational basis for the trial judge's characterization of appellant's conduct . . ." 208 So.2d at 124. That court recognized the right of an individual to be critical of a judge or other public officer but considered the conduct of respondent and Dawkins not mere criticism but equivalent to jury tampering. 208 So.2d at 124.

The Florida Supreme Court declined review on the grounds that it lacked jurisdiction and appellant filed a petition for writ of certiorari in this Court (Respondent's Exhibit 5). The appellee filed a brief in response thereto (Respondent's Exhibit 1), and on October 14, 1968, said petition was denied, Mr. Justice Douglas being of the opinion that certiorari should

have been granted. *Dawkins and Thomas v. Florida,* Case No. 164, Oct. Term, 1968.

On October 30, 1968, respondent filed a petition for writ of habeas corpus in the United States District Court, Northern District of Florida, pursuant to 28 U.S.C., §2254, claiming the sentence imposed by the Circuit Court in and for Alachua County, Florida, was ". . . void and in contravention of the First and Fourteenth Amendments to the Constitution of the United States, as being a judicial abridgment of freedom of speech and expression . . . in violation of the standards prescribed by the Supreme Court of the United States . . ." in *Pennekamp v. Florida* and *Wood v. Georgia,* supra, (Petition, p. 2). A hearing was held on November 4, 1968, and the petitioner filed various records and documents as its response to the petition which were made a part of the record by the court's order of the same date. A motion to dismiss was also filed and denied by the court.

On November 5, 1968, after having heard argument of counsel, the court entered its order denying respondent the relief prayed for in the petition. In said order the District Judge, the Honorable Winston E. Arnow, stated:

"Petitioner contends the presumption of correctness accorded these findings by 28 U.S.C.A. 2254 is overthrown because they are not fairly supported by the record. My conclusion is the contrary; the record does support them.

"Petitioner's conduct here far transcended permissible criticism under Constitutionally guaranteed freedom of speech. *I agree with the trial judge that this conduct constituted a veiled threat.* I also agree with the District Court of Appeal that his findings, and conclusion, when

measured against the standard articulated in *Bridges v. California*, 314 U.S. 252, and contrasted with the facts presented in *Wood v. Georgia*, 370 U.S. 375 are proper and supported by the record.

"It is true that, on the record before the trial judge at the time he entered his judgment of contempt, there was no direct evidence that the publication had been made accessible to or had been read by any member of the grand jury. But the answer of Irvin Lee Dawkins and of this Petitioner filed before him, and their stipulation, established Dawkins distributed four copies of the publication to four persons in the hallway adjacent to the grand jury room, and that other copies were distributed by him and this Petitioner elsewhere in the City of Gainesville. The trial judge concluded, as I conclude, it was probable the publication went both into the hands of witnesses who might thereby be improperly influenced, as well as into the hands of some of the grand jorors (sic).

"The freedom of speech guaranteed us by our Constitution, like other freedoms so guaranteed us, is a cherished right, to be guarded and protected zealously, but it cannot be used as a cloak to justify obstruction of justice. The liberty granted by it may not be transmogrified into the license to seek to influence and affect, by threat and intimidation, the outcome of grand jury deliberations.

"There is not here involved comment on and criticism of judicial action taken; *there is here involved threat and intimidation with respect to judicial matters still in suspense.* Moreover, such is not addressed to a *judge*, but to a *grand jury.*

"Nor in its context could it be considered *anything less than a threat* designed to coerce action by the grand jury desired by Petitioner. . .

"There was here sought immediate interference with grand jury action; there was all reasonable ground to believe there was here presented in fact clear, present and imminent danger to the administration of justice." (Emphasis supplied)

Respondent lodged an appeal in the Court of Appeals, Fifth Circuit, and on June 26, 1969, the order of the district court was reversed. The Court concluded that the language did not contain any ". . . real threat . . ." and that the most that could be said about the publication was that it did ". . . no more than threaten future adverse criticism which was reasonably to be expected anyway . . ."

ARGUMENT

The Court of Appeals, Fifth Circuit, contrary to the state trial judge, the state appellate court, and the federal district judge, concluded there was no "real" threat contained in the publication; that the *language* used therein did not constitute a "clear and present danger" to the grand jury deliberations; and that the conviction was invalid under this Court's decisions rendered in *Bridges v. California,* 314 U.S. 252 (1941); *Pennekamp v. Florida,* 328 U.S. 331 (1946); *Craig v. Harney,* 331 U.S. 367 (1947); and *Wood v. Georgia,* 370 U.S. 375 (1962).

The petitioner urges the language used justified the trial judge's finding that a threat was made upon the grand jury; that a "clear and present danger" was presented by the *distribution* of the publication to the administration of justice; and, that the Court of Appeals misapplied the law as announced in the aforementioned decisions.

The respondent, after stating the grand jury was ". . . racist and Klan infested . . ." wrote, ". . . If there are any Uncle Toms on that grand-jury, we all know who they will be . . .". The trial judge found this to be a veiled threat. Judge Spector, in speaking for the District Court of Appeal, First District, stated:

> ". . . The Trial judge further found that the appellants' reference to 'Uncle Toms' in the above quoted exerpt from the circular, constituted a veiled threat to those members of the grand jury who were of the Negro race. Our consideration of this racist tactic by appellants in the

> circumstances presented here would lead all but those with a myopic viewpoint to conclude, as did the Trial judge, that if those members of the grand jury who were so crudely singled out did not vote out a presentment in accordance with the appellants' desires, the censure of the Negro community would be suffered by those daring to defy their dictate . . ." 208 So.2d at 121.

The petitioner is at a total loss as to how the Court of Appeals could conclude that the foregoing was not a "real" threat. To suggest that it was merely threatened future adverse criticism is nothing short of incredible.

Whether the language referred to was or was not a threat is not dispositive of the cause. There is no authority which suggests that interference can only result from threats or coercion. In *Wood v. Georgia,* supra, this Court recognized that courts have the right ". . . to conduct their business in an untrammeled way . . . and that courts necessarily possess the means of punishing for contempt when *conduct tends* directly to prevent the discharge of their functions . . ." 370 U.S. at 576. The portions of the publication describing the grand jurors as "racist", "Klan-infested" and "fixed" could only be expected to cause antagonism and thereby interfere with the deliberations of the grand jury. The trial judge so found (Respondent's Exhibit 6, p. 22). If this were not the intent of said publication, why would respondents deem it desirable to distribute it in the hallway adjacent to the grand jury room while the grand jury was in deliberation.

It is urged that the language used by respondent and her colleague was sufficiently offensive that *if* a "clear and present danger" was created to the administration of justice by its place

and time of distribution, the contempt conviction should have been upheld and the order of the district court affirmed.

The petitioner urges that a "clear and present danger" was created by the *conduct* of respondent and Jack Dawkins. The publication was distributed in the hallway adjacent to the grand jury room, while the grand jury was deliberating and conducting its investigation into the accusations raised by the respondent and during recesses. One can hardly imagine the circumstances which would have to exist in order for there to be a "clear and present danger" if this is not enough. Surely there need not be an *actual* interference, before the court can act.

An analysis of the *Bridges, Pennekamp, Harney* and *Wood* decisions reveal that in each the "criticism" was directed at the *trial judge* and the underlying basis for reversal in each was the notion that:

> ". . . A *judge* who is part of such a dramatic episode can hardly help but know that his decision is apt to be unpopular. But the law of contempt is not made for the protection of *judges* who may be sensitive to the winds of public opinion. *Judges* are supposed to be men of fortitude, able to thrive in a hardy climate . . ." 311 U.S. 376. (Emphasis supplied)

This view, although strongly questioned (see dissenting opinion by Frankfurter in *Bridges,* supra, and concurring opinion in *Pennekamp,* supra) has no application to the instant case. In *Wood v. Georgia,* supra, Justice Harlan, preceptively noted:

> ". . . It cannot be assumed with *grand jurors,* as it has been with judges, Craig v. Harney, supra, (311 U.S., at 376), that they are all 'men of fortitude." What may not seriously endanger the independent deliberations of a judge may well jeopardize those of a grand or petit jury." 370 U.S. at 387. (Emphasis supplied)

Admittedly Justice Harlan misconceived what was involved in the *Wood* case but his distinction is no less valid. Indeed, as Chief Justice Warren noted in the *Wood* case, it did not concern itself with ". . . misconduct aimed at influencing the outcome of a trial or *grand jury* proceeding . . ." 370 U.S. at 389.

In *Wood,* supra, the defendant was *criticizing* the judge who had instructed the grand jury to investigate alleged Negro block voting. Rumors had been made that candidates for public office had spent large sums of money to obtain the Negro vote. The allegedly contemptuous publication in *Wood* was truly criticism for the statements pertained to something which had already taken place. Thus, there could be no present danger to the administration of justice because the articles ". . . were concerned with actions already taken by the court . . .". See: *State v. Morris,* 406 P.2d 349, 357 (1965), reversing a contempt conviction on this basis.

In addition to the foregoing it should be noted that the language used by Wood in his articles were consistent with his statement of intent filed in the cause wherein he specifically

denied any malicious intent. 370 U.S. at 382. No such statement was filed by respondent in the case at bar. The publication here rendered it impossible for appellant to disclaim her true motive and purpose.

The *Wood* decision is clearly distinguishable and it provides no authority for the action taken by the Court of Appeals. The courts reliance upon *Bridges, Pennekamp* and *Harney* is likewise misplaced for in all of those cases, in addition to criticizing actions of a judge, the articles appeared in newspapers and were not disseminated in the very presence of the grand jury. In *Pennekamp* the criticism was of action already taken by the trial judge and its effect on a jury selected in the future was remote. 328 U.S. at 348. The same was true in the *Bridges* case.

The foregoing clearly demonstrates that this case is different from those previously decided by this Court and none of those relied on by the Court of Appeals justify the result reached by that court.

This Court recognized the importance of the grand jury to our judicial and political system. 370 U.S. at 390. Surely, it must be informed if it is to perform its proper function and admittedly it cannot "operate in a vacuum"; but, certainly it should be free from "criticism" until after it has acted or done something to deserve criticism! When the grand jury was finished and reported its findings, it became subject to the same criticism as a judge or any other person, but ". . . the propriety and necessity of preventing interference with the course of justice by *premature* statement, argument or intimidation hardly can be denied . . ." *Patterson v. Colorado,* 205 U.S. 454, 463.

When the grand jury is conducting an investigation into charges such as were involved in the instant case, they should

not be "torn from their moorings of impartiality by the undertow of extraneous influence" 328 U.S. at 366. Why should the Alachua County Grand Jurors be ". . . 'embarrassed' by having matters put into their minds, the effect of which it is impossible to estimate or assess? Of course, there is public interest in the function and action of the grand jury but the legitimate interest precludes . . . dissemination of matters . . . intended to influence proceedings or inevitably calculated to disturb the course of justice . . ." 328 U.S. at 361. Clearly, all sides should be heard on such matters—indeed the respondent and her colleague were permitted to appear before the grand jury—but when all have had their say, then it is time for deliberation in an atmosphere conducive to intelligent and rational consideration of the issues. To have it otherwise would destroy public confidence in our judicial institutions, if not the institutions themselves.

The decision of the Court of Appeals, Fifth Circuit, is unquestionably in conflict with the import of the prior decisions of this Court. It is erroneous in law; but more importantly, with that of reason and justice. It constitutes a gross example of judicial forgiveness and reflects an inability to discriminate between the exercise of free speech and the abuse thereof. As was said by this Court in *Pennekamp,* supra:

> ". . . In securing freedom of speech, the Constitution hardly meant to create the right to influence judges or juries. That is no more freedom of speech than stuffing a ballot box is an exercise of the right to vote . . ." 328 U.S. at 366.

It was not what respondent and her associate said or wrote, although clearly that was a necessary factor in determining whether she was in contempt of court. It was what she wrote

and when and where she and her colleague distributed the publication that brought the corrective power of the court to bear.

Freedom of the press ". . . carries with it responsibility even for the press; freedom of the press is not a freedom from responsibility for its exercise . . ." *Pennekamp*, supra, at 356. It is imperative that this rule of law obtains, for individual responsibility is essential, if we are to have an ordered society. Unless we have an ordered society we cannot hope to have a free one—for anyone! See: Morris, *American Society and the Rebirth of Civil Obedience*, 54 A.B.A.J. 653 (1968).

CONCLUSION

The Petition filed herein should be granted and the opinion of the Court of Appeals, Fifth Circuit, should be reversed. This Court should accept jurisdiction if for no other reason than to resolve the conflict which exists between the opinion entered below and the prior announcements of this Court, not to mention the decision of the District Court of Appeals, First District, State of Florida, which this Court declined to review.

Respectfully submitted,

EARL FAIRCLOTH
Attorney General

RAYMOND L. MARKY
Assistant Attorney General

COUNSEL FOR PETITIONER

PROOF OF SERVICE

This is to certify that I have forwarded a copy of the foregoing Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit and to the Honorable Jerome J. Bornstein, 125 South Court Avenue, Orlando, Florida, 32901, by Mail this _____day of November, 1969.

RAYMOND L. MARKY
Assistant Attorney General

The Capitol
Tallahassee, Florida 32304

OF COUNSEL FOR PETITIONERS

APPENDIX I

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA PENSACOLA DIVISION

CAROL W. THOMAS,

Petitioner,

vs.

JOE M. CREVASSE, JR., Sheriff of Alachua County, Florida,

Respondent.

ORDER

The Circuit Court of Alachus County, Florida, convened a grand jury to investigate certain charges against police officers of the City of Gainesville, Florida. While it was in session, or during its recess, and before it had completed its deliberation and been discharged, the Petitioner here, CAROL W. THOMAS, and one Irvin Lee Dawkins, distributed in the community a circular or hand bill containing, along with other matters, the following:

> "The so-called authorities of Gainesville are at their old trick again. They have called together a grand-jury to investigate charges made by black people against that racist, klan-infested police department. Well, gather round, let me tell you this; that grand-jury is just as racist and klan infested as the police department is. I told you before that when they got through lying, fixing, framing,

and denying—nothing was going to be done! Look who's sitting on the jury. What they will probably do is put in a couple of Uncle Toms to make their findings justifiable. If there are any Uncle Toms on that grand jury, we all know who they will be.

"By them housing female prisoners in the county jail is not going to solve the issues; just one of them. In the meantime that sadist Wilderson gets off scott-free. And Ted Duncan—I don't have to tell you about that Negro-hating hunkie, I think you already know. And Ex-Mayor McKinney—He's worse. A lying, no-good racist if I ever saw one. He reminds me of 'Bull' Conner.

"There are people who are going to be subpoenaed to come to this fixed grand-jury, including myself. Many people are afraid to go—which shows WHITE POWER again. WE ARE ASKING THAT EVERYONE IN GAINESVILLE WHO IS MAN AND WOMAN ENOUGH TO STAND UP AND FIGHT AGAINST THIS OPPRESSIVE CITY AND COUNTY GOVERNMENT COME FORWARD AND TESTIFY ON MONDAY, DECEMBER 18, at 9:30 A.M. By the way, where are those so-called Negro-leaders in Gainesville. You know these things have been going on, but you are afraid to stand up. So stay in your chairs, we know you are a part of white oppression."

The State Attorney filed petitions for rule to show cause why they should not be held in contempt, answers were filed, and hearing held. The trial judge entered order adjudging them to be in contempt and sentenced Irvin Lee Dawkins to six months imprisonment and this Petitioner, CAROL W. THOMAS, to four months imprisonment.

She appealed her conviction to District Court of Appeal, First District of Florida, which affirmed it. She filed petition for writ of certiorari and notice of appeal in the Supreme Court of Florida; that Court denied and dismissed them respectively. Thereafter she filed petition for writ of certiorari in the Supreme Court of the United States and that was denied by that Court on October 14, 1968. Thereupon she filed this petition for writ of habeas corpus before this Court. The matter was set for hearing before the Court on November 4, 1968, and argument of counsel for Petitioner and Respondent has been heard.

At the outset, it should be noted the petition does not allege, and Petitioner does not contend, that she has exhausted the post-conviction remedies provided by Florida Rule 1.850. To the contrary, her counsel argues there here exist circumstances rendering such process ineffective, and serving no useful purpose, and with that argument the Court agrees. The contention here presented is that the sentence imposed violated the First and Fourteenth Amendments to the Constitution of the United States. It is the same contention presented to the Courts of Florida and by them rejected; returning it to them for further consideration would serve no useful purpose.

It follows this petition should be considered on the merits. And on the merits it should be denied.

The trial judge made written findings. Among them is this one:

> "The Court finds particularly the reference in the publication to Negro members of the grand jury in referring to the "Uncle Toms"—this expression, of course, is a reference to those of the Negro race who will forego their prin-

ciples in an effort to collaborate with those Whites who are attempting to suppress them. I think that the reference in the publication that "if there are any Uncle Toms on that grand jury we all know who they will be" constitutes a veiled threat to the members of the grand jury who are of the colored race."

The record establishes the grand jury was composed of five negroes and thirteen whites.

He further found that the reference to a "racist and klan-infested grand jury" would tend to antagonize members of the grand jury. He reached the conclusion, and found that "this publication, under the circumstances, was calculated and intended to interfere with the administration of justice and did create a clear and present danger to the administration of justice."

Petitioner contends the presumption of correctness accorded these findings by 28 U.S.C.A. 2254 is overthrown because they are not fairly supported by the record. My conclusion is the contrary; the record does support them.

Petitioner's conduct here far transcended permissible criticism under constitutionally guaranteed freedom of speech. I agree with the trial judge that this conduct constituted a veiled threat. I also agree with the District Court of Appeal that his findings, and conclusion, when measured against the standard articulated in *Bridges v. California*, 314 U.S. 252, and contrasted with the facts presented in *Wood v. Georgia*, 370 U.S. 375, are proper and supported by the record.

It is true that, on the record before the trial judge at the time he entered his judgment of contempt, there was no direct evidence that the publication had been made accessible to or

had been read by any member of the grand jury.[1] But the answer of Irvin Lee Dawkins and of this Petitioner filed before him, and their stipulation, established Dawkins distributed four copies of the publication to four persons in the hallway adjacent to the grand jury room, and that other copies were distributed by him and this Petitioner elsewhere in the City of Gainesville. The trial judge concluded, as I conclude, it was probable the publication went both into the hands of witnesses who might thereby be improperly influenced, as well as into the hands of some of the grand jorors.

The freedom of speech guaranteed us by our Constitution, like other freedoms so guaranteed us, is a cherished right, to be guarded and protected zealously, but it cannot be used as a cloak to justify obstruction of justice. The liberty granted by it may not be transmogrified into the license to seek to influence and affect, by threat and intimidation, the outcome of grand jury deliberations.

There is not here involved comment on and criticism of judicial action taken; *there is here involved threat and intimidation with respect to judicial matters still in suspense.* Moreover, such is not addressed to a judge, but to a grand jury.

Nor in its context could it be considered *anything less than a threat* designed to coerce action by the grand jury desired by Petitioner.

---

[1] Such is established by the record of a hearing conducted in this Court in connection with this matter after the entry of the judgment of the trial court. That record was made a part of the record before the District Court of Appeal, and referred to in its opinion. I do not understand how testimony taken after the trial judge's hearing, and not a part of the record before him, can be considered in determining the constitutional validity of his judgment, and so I do not consider it.

There was here sought immediate interference with grand jury action; there was all reasonable ground to believe there was here presented in fact clear, present and imminent danger to the administration of justice.

Accordingly, it is

ORDERED that this petition for writ of habeas corpus should be and it is hereby denied.

DONE AND ORDERED in Chambers at Pensacola, Florida, this 5th day of November, 1968.

WINSTON E. ARNOW
United States District Judge

APPENDIX II

CORRECTED

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 26935

CAROL W. THOMAS,
Petitioner-Appellant,

versus

JOE M. CREVASSE, JR., Sheriff of Alachua County, Florida,
Respondent-Appellee.

Appeal from the United States District Court for the Northern District of Florida

---

(June 26, 1969)

Before TUTTLE and GEWIN, Circuit Judges, and COMISKEY, District Judge.

COMISKEY, District Judge: We review here the denial of a petition for a writ of habeas corpus filed by appellant, Carol W. Thomas, who had been found guilty of contempt of court.[1] Appellant's conviction arose out of an incident involving the Alachua County, Florida Grand Jury, Appellant had complained publicly that Negro women imprisoned in the Gainesville, Florida City Jail were being sexually molested by certain law enforcement officials. On December 11, 1967, the Alachua County Grand Jury was called into session to investigate these charges. This Grand Jury consisted of thirteen Caucasians and five Negroes. While the Grand Jury was in session considering this matter, or during a recess, one Irven Lee Dawkins, distributed four copies of a publication called "Black Voices", of which he and appellant were the co-authors, to four persons in the hallway adjacent to the Grand Jury room. This publication was a mimeographed, two-page handbill. An article in this publication, which had been written by Dawkins, stated in part:

> "The so-called authorities of Gainesville are at their old trick again. They have called together a grand-jury to investigate charges made by Black people against that racist, Klan-infested police department. Well, gather

---

[1] On April 12, 1968, a panel of this court (Judges Thornberry, Ainsworth and Dyer) directed the United States District Court for the Northern District of Florida "to enter an order granting bail in the amount of $1,000" to appellant and Irvin Lee Dawkins (with whom we are not concerned in this appeal) "pending disposition of the appeal from the Florida State convictions through the exhaustion of such remedies and appellate procedures as are available to appellants and provided such proceedings are carried on with due diligence to a prompt conclusion."

round, let me tell you this; that grand-jury is just about as racist and Klan infested as the police department is. I told you before that when they got through lying, fixing, framing, and denying—*nothing* was going to be done! Look who's sitting on the jury. What they will probably do is put in a couple of Uncle Toms to make their findings justifiable. If there are any Uncle Toms on that grand-jury, we all know who they will be.

"By them housing female prisoners in the County Jail is not going to solve the issues; just one of them. In the meantime that sadist Wilderson gets off scott-free. And Ted Duncan—I don't have to tell you about that negro-hating hunkie, I think you already know. And ex-mayor McKinney—he's worse. A lying, no-good, racist if I ever saw one. He reminds me of 'Bull' Conner.

"There are people who are going to be subpoenaed to come to this fixed grand-jury, including myself. Many people are afraid to go—which shows WHITE POWER again. WE ARE ASKING THAT EVERYONE IN GAINESVILLE WHO IS MAN AND WOMAN ENOUGH TO STAND UP AND FIGHT AGAINST HIS OPPRESSIVE CITY AND COUNTY GOVERNMENT COME FORWARD AND TESTIFY ON MONDAY, DEC. 18 AT 9:30 A.M. By the way, there are those so-called negro-leaders in Gainesville. You know these things have been going on, but you are afraid to stand up. So stay in your chairs, we know you are a part of white oppression."[2]

---

[2] Appellant's exhibit A-7.

In addition to the four copies of "Black Voices" distributed in the hall next to the Grand Jury room by Joe Dawkins, the appellant and Dawkins distributed other copies of this publication elsewhere in the city of Gainesville.

On December 27, 1967, the appellant and Dawkins were found guilty of contempt of court in the Circuit Court of Alachua County and sentenced to six months in the County Jail. The Judge who passed judgment and pronounced sentence found that the publication could have fallen into the hands of witnesses who were to appear before the grand jury and the members of the grand jury. The Judge said that the statements in the publication about "Uncle Toms" on the grand jury "constitutes a veiled threat to the members of the grand jury who are of the colored race."[3] The Judge further found that this publication was "intended to interfere with the administration of justice . . ."[4] This ruling was affirmed by the First District Court of Appeal of the State of Florida on March 7, 1968. The case was appealed to the Florida Supreme Court but was dismissed because of lack of jurisdiction on April 23, 1968. The United States Supreme Court denied certiorari on October 14, 1968.

On October 30, 1968, the appellant filed a petition for a writ of habeas corpus in the United States District Court for the Northern District of Florida. This petition was denied by the District Judge, who agreed that the appellant's conduct constituted a veiled threat. The District Judge held that the right of freedom of speech does not extend so far as to allow

---

[3] Record, page 9.
[4] Record, page 10.

a person to attempt to affect the outcome of grand jury deliberations by threat and intimidation. The District Judge concluded that the attempt to interfere with the grand jury's deliberations constituted a clear and present danger to the administration of justice.

We cannot agree with the District Court's holding and therefore reverse. The Supreme Court was faced with the conflict between freedom of the press and the orderly administration of justice in *Bridges v. State of California*, 314 U.S. 252, 62 S.Ct. 190, 86 L.Ed. 192 (1941). In this case the Court applied the "clear and present danger" test, which had been formulated in *Schenck v. United States*, 249 U.S. 47, 39 S.Ct. 247, 63 L.Ed. 470 (1919), to published comments about pending litigation and said, "What finally emerges from the 'clear and present danger' cases is a working principle that the substantive evil must be extremely serious and the degree of imminence extremely high before utterances can be punished." 314 U.S., at 263, 62 S.Ct., at 194. This principle has been adhered to by the Supreme Court in subsequent cases. In *Pennekamp v. State of Florida*, 328 U.S. 331, 347, 66 S.Ct. 1029, 1037, 90 L. Ed. 1295 (1946), the Court said, "In the borderline instances where it is difficult to say upon which side the alleged offense falls, we think the specific freedom of public comment should weigh heavily against a possible tendency to influence pending cases. Freedom of discussion should be given the widest range compatible with the essential requirement of the fair and orderly administration of justice." The *Bridges* case was also followed in *Craig v. Harney*, 331 U.S. 367, 67 S.Ct 1249, 91 L.Ed. 1546 (1947).

The most recent case of this issue, and also the decision

most relevant to this appeal, is *Wood v. Georgia,* 370 U.S. 375, 82 S.Ct. 1364, 8 L.Ed.2d 569 (1962). In the *Wood* case, as in the case before us, the Supreme Court was faced with a contempt conviction arising out of published comments pertaining to a grand jury investigation. The Court not only adhered to the principles enunciated in *Bridges, Pennekamp,* and *Craig v. Harney,* but emphasized the importance of preserving freedom of speech and press when it pertains to a grand jury investigation of issues of public concern in the following language:

> "Historically, this body [the grand jury] has been regarded as a primary security to the innocent against hasty, malicious and oppressive persecution; it serves the invaluable function in our society of standing between the accuser and the accused . . . to determine whether a charge is founded upon reason or was dictated by an intimidating power or by malice and personal ill will. Particularly in matters of local political corruption and investigations is it important that freedom of communication be kept open and that the real issues not become obscured to the grand jury. It cannot effectively operate in a vacuum.
>
> * * * *
>
> "The administration of law is not the problem of the judge or prosecuting attorney alone, but necessitates the active cooperation of an enlightened public. Nothing is to be gained by an attitude on the part of the citizenry of civic irresponsibility and apathy in voicing their sentiments on community problems . . . . The first Amend-

ment envisions that persons be given the opportunity to inform the community of both sides of the issue under such circumstances.

". . . When the grand jury is performing its investigatory function into a general problem area, without specific regard to indicting a particular individual, society's interest is best served by a thorough and extensive investigation, and a greater degree of disinterestedness and impartiality is assured by allowing free expression of contrary opinion. Consistent suppression of discussion likely to affect pending investigations would mean that some continuing public grievances could never be discussed at all, or at least not at the moment when public discussion is most needed." U.S., at 390-392, 82 S.Ct., at 1373-1374.

In view of the above cases, the language contained in "Black Voices" would have to constitute an extremely serious threat to the grand jury deliberations in order to justify the contempt conviction. This is especially true in view of the fact that the grand jury investigation in the case before us was certainly concerned with a matter of grave public concern—the alleged sexual molestation of Negro women imprisoned in the city jail.

With this principle in mind we now examine the above-quoted three paragraphs published in "Black Voices" which gave rise to appellant's conviction. We do not believe that the second and third paragraphs constitute even a remote danger to the fair administration of justice. In the second

paragraph the writer does make vicious attacks upon certain persons. But while this language is vitriolic, this is not enough to constitute a clear and present danger to the fair administration of justice within the meaning of *Bridges* and its progeny. "The vehemence of the language used is not alone the measure of the power to punish the contempt. The fires which it kindles must constitute an imminent, not merely a likely, threat to the administration of justice. The danger must not be remote or even probable; it must immediately imperil." *Craig v. Harney, supra,* 331 U.S., at 376, 67 S.Ct., at 1255. We can find no threat or other device to obstruct the grand jury's investigation in this paragraph.

The third paragraph offers an even weaker ground for a contempt conviction. Here, the writer is only asking that all people who have information which could support indictments come forward and testify before the grand jury. In absence of a threat against witnesses who fail to testify or who testify adversely to the writer's viewpoint, we do not see how this can possibly be construed as a threat to the grand jury's investigations. We find no hint of reprisals against people who do not testify or who testify in defense of the jail officials. Indeed, the publication "Black Voices" does not purport to represent any group which could carry out such reprisals. Rather, it evidently represents only the views of the two writers—the appellant and Jack Dawkins.

The latter part of the first paragraph is the only part of the language in question which can possibly be construed as a threat to the grand jury's investigation. This first paragraph begins with a vehement denunciation of the authorities of Gainesville and the "racist, Klan-infested police depart-

ment." The writer then says that the grand jury "is just as racist and Klan infested" as the Police department and that it would not return indictments or reach any conclusions supporting the appellant's charge but would instead content itself with "lying, fixing, framing, and denying." The paragraph closes with this statement:

> "Look who's sitting on the [grand] jury. What they will probably do is put in a couple of Uncle Toms to make their findings justifiable. If there are any Uncle Toms on that grand-jury, we will know who they will be."[5]

Of the eighteen members of the grand jury, five were Negroes. As we noted above, the state trial judge called this language "a veiled threat" to the Negro members of the grand jury, and the United States District Judge who denied appellant's petition for a writ of habeas corpus agreed.

But, as was true of the second paragraph, this language and the rest of the first paragraph does not contain any real threat to the members of the grand jury—white or Negro. The only "threat" it makes is that if the grand jury does not return any indictments on the basis of appellant's allegations, the authors of "Black Voices" will regard the white members of the grand jury as "racists" and Ku Klux Klan sympathizers and the Negro members as "Uncle Toms." As we said above, this publication did not purport to represent any group but apparently contained only the opinions of the two writers. The most that can be said about the language in the first paragraph is that it threatened to violently

---

[5] See note 1, *supra.*

criticize the grand jurors if they did not return indictments. It "did no more than threaten future adverse criticism which was reasonably to be expected anyway" if indictments were not returned. *Bridges v State of California, supra,* 314 U.S., at 273, 62 S.Ct., at 198. We therefore hold that this language did not constitute such a clear and present danger to the grand jury deliberations so as to justify the conviction of the appellant for contempt of court.

The judgment of the District Court is therefore reversed and the case is remanded with directions to vacate the judgment of conviction.

REVERSED AND REMANDED WITH DIRECTIONS.

Adm. Office, U.S. Courts—Scofields' Quality Printers, Inc, N. O., La.

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 26935

CAROL W. THOMAS,

Petitioner-Appellant,

versus

JOE M. CREVASSE, JR., Sheriff of Alachua County, Florida,

Respondent-Appellee.

Appeal from the United States District Court for the Northern District of Florida

ON PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC

(August 19, 1969)

Before TUTTLE and GEWIN, Circuit Judges, and COMISKEY, District Judge.

PER CURIAM: The Petition for Rehearsing is DENIED and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (Rule 35 Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 12) the petition for Rehearing En Banc is DENIED.

Adm. Office, U.S. Courts—Scofields' Quality Printers, Inc., N. O., La.